Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD J. ALLISON &
MARTHA J. ALLISON

Petitioners,

vs.

The Unknown Heirs, Devisees, Assigns and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns and Larry's Service Center, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto, and sole ownership thereof, whether such claims be present or contingent, including any claim or possible claim of dower, inchoate, or accrued,

Respondents.

On Petition for Writ of Certiorari To the Supreme Court of the United States From the Supreme Court of Montana.

PETITION FOR WRIT OF CERTIORARI

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65 pp

QUESTIONS PRESENTED FOR REVIEW

The Petitioners, the Allisons maintain that the questions which should be reviewed by the United States Supreme Court are:

(a). Whether the courts below erred in finding that the U.S. Internal Revenue Service (IRS) is an essential party which must be included for this state court Quiet Title action to proceed;

(b). Whether the courts below erred in denying the relief requested by the Allisons in this Quiet Title Action, against the named Defendants, City of Forsyth and Larry Burns for the recovery of certain of Allisons real & personal properties the Defendants purchased from the IRS;

(c). Whether the courts below erred in dismissing this state court Quiet Title action against the named Defendants as subsequent purchasers of Allisons' properties from the IRS, when the Complaint alleged specific defects & violations by the IRS in the proceedings prior to the IRS sale;

(d). Whether the courts below erred in suspending the rules of procedure to allow the Defendants counsel to submit improper and untimely responsive briefs and pleadings.

(e). Whether the courts below erred in denying the Allisons temporary relief to protect their improperly and illegally seized properties during the pendency of administrative and court proceedings.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are as follows:

Petitioner:

The party filing this Petition for Writ of Certiorari is Ronald J. Allison, who is appearing Pro Se in this matter as he has in the prior proceedings in Montana District Court No. DV-97-127 and Montana Supreme Court case No. 97-641. Mr. Allison and his wife, Martha J. Allison were and are the rightful owners of certain real and personal property which was wrongfully searched, seized and sold by the Federal Government's Internal Revenue Service (IRS) to the named Defendants. Mr. Allison is a citizen of Forsyth, Rosebud County, Montana and a Natural Soverign citizen of the United States of America.

Respondents:

The Respondents in this case are the City of Forsyth, Rosebud County, Montana, and Larry Burns and his business, Larry's Service Center, of Baker, Fallon County, Montana. The City of Forsyth was the subsequent purchaser of certain of the Petitioner's real property and Larry Burns and his business, Larry's Service Center, of Baker, Montana, was the subsequent purchaser of certain personal proeprty rightfully belonging to the Allisons. Both named Defendants purchased their respective properties at an Internal Revenue Service out-of-county auction sale. The named Defendants, as a result of their purchases at the IRS auction, now claim certain legal interests in this real and personal property which was wrongfully and illegally searched, seized, and sold by the IRS. The Allisons originally brought this action in Montana State District Court, for Rosebud County, Montana under the auspices and authority of the state's Quiet Title laws (79-28-101, et.seq., MCA). The IRS and the United States government were not named as parties in that the IRS/US interest in the Allisons' properties

was extinguished as a result of the Internal Revenue Service's out-of-county auction sale. The IRS, upon the completion of the auction, no longer had or has any claim, right, title, or interest in that real and personal property of the Allisons, they having sold whatever claim, right, title, or interest they ever had in said property to the named Defendants, Larry Burns dba Larry's Service Center and the City of Forsyth, Rosebud County, Montana.

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Petitioners,

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The Unknown Heirs, Devisees, Assigns and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns and Larry's Service Center, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto, and sole ownership thereof, whether such claims be present or contingent, including any claim or possible claim of dower, inchoate or accrued,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

Ronald J. Allison petitions for a Writ of Certiorari to review the judgment and opinion of the Supreme Court of the State of Montana entered in this case on June 9, 1998 and filed on June 9, 1998.

OPINIONS BELOW

The following are Opinions and Orders of the Courts below that are pertinent to this Petition for a Writ of Certiorari:

(a). Opinion of the Court, dated and filed June 9, 1998, of the Supreme Court of the State of Montana, affirming the decision of the Sixteenth Judicial District Court Judge, and reported at 1998 MT 141N.

(b). Order of the Court, dated October 29, 1997 and filed October 31, 1997, of the Sixteenth Judicial District Court, Rosebud County, Montana, Robert S. Keller, Presiding, which granted the Defendants' motions to dismiss the case. This is an unreported decison.

Copies of each of the above-identified Opinions and Orders are included in the Appendix to the Petition for a Writ of Certiorari. Pursuant to Supreme Court Operating Rules (1996) the Supreme Court decision shall not be cited as precedent and is reported as a noncitable case by the Montana Supreme Court.

JURISDICTION

This matter now properly belongs before the United States Supreme Court on a Writ of Certiorai, on appeal from the decisions issued in the Courts below, specifically the Opinion of the Supreme Court of the State of Montana which affirmed the decison of the Montana Sixteenth Judicial District Court, Rosebud County, which granted the Defendants' motions to dismiss the Complaint for Quiet Title.

The Petitioners brought this Quiet Title action against the subsequent purchasers of certain of Petitioners' real and personal properties from the IRS in a Sealed bid Sale held out-of-county. Petitioners brought this action in Montana state court as this is where the properties involved are located and both Petitioner and Respondents are resident of the state of Montana. The Allisons sought to have their right, title, and interests adjudicated, under Montana state law provisions, as is authorized under 28 USC 2410.

The Allisons brought this action originally in the Sixteenth Judicial District Court for Rosebud County, Montana. When the District Court granted the motions of the Defendants (City and Burns) to dismiss the Quiet Title complaint, the Allisons then appealed to the Supreme Court of the State of Montana. The Supreme Court of Montana, on June 9, 1998 issued its Opinion which affirmed the District Court decison. The Allisons are now seeking a review and ultimately a reversal and remand on the decisions issued by the Courts below.

The Petitioners, Ronald J. and Martha J. Allison are citizens of Forsyth, Rosebud County, Montana and Ronald J. Allison is a natural born, soverign citizen of the United States of America. The Defendant, City of Forsyth is a government body corporate and politic and a subdivision of the state of Montana. Defendant Larry Burns is a resident of Baker, Montana and his business, Larry's Service Center is located in Fallon County, Montana.

As the Supreme Court of the State of Montana has issued its final Opinion, disposing of all the claims and issues presented, this matter is now ripe for a Petition for Writ of Certiorari before the U.S. Supreme Court. This Petition is both proper and timely, given the Supreme Court of Montana isued its Opinion on June 9, 1998. Furthermore, this Petition is a proper forum to decide the conflicts of laws between the Montana decisons and the decisions of other state's courts and the federal courts. The Montana Suprem Court has decided an important federal question in a manner that conflicts with the decisions of another state's courts and the United States Courts of Appeals. These questions of federal law should be settled by the United States Supreme Court on this Petition for Writ of Certiorari.

STATUTES & REGULATIONS INVOLVED

The Statutes and Regulations and Rules involved in this particular case are:

(a). Fourth Article in Amendment to the Original Organic United States Constitution.

(b). Fifth Article in Amendment to the Original Organic United States Constitution.

(c). Federal Statutes:

26 USC 6201
26 USC 6203
26 USC 6303
26 USC 6331
26 USC 7426
28 USC 1444
28 USC 2410
5 USC 552
5 USC 552a

(d). Federal Rules & Regulations:

26 CFR 301.6201
26 CFR 301.6203
26 CFR 301.6303
26 CFR 301.6331
26 CFR 601.106

(e). Federal Rules of Civil Procedure:

FCRP 58
FRCP 69

(f). Montana Statutes:

70-28-103, MCA
79-28-101, et.seq., MCA

(g). Internal Revenue Service (IRS) Forms:

Form 23 C
Form 17 A
Form 2666
Form 4340

STATEMENT OF THE CASE

Petitioners, Ronald J. Allison and Martha J. Allison, appearing Pro Se, in this matter, filed this case in Montana state district court, as a Quiet Title action, to quiet title to certain of their real and personal properties, which they maintain was wrongfully and illegally seized by the United States Internal Revenue Service, (IRS) and then subsequently sold by the IRS, in a Sealed Bid Sale, held in Yellowstone County, Montana. The purchasers of the IRS alleged interest or claim against the property were the City of Forsyth, Rosebud County, Montana and a Larry Burns dba larry's Service Center of Baker, Montana.

As of the sale date, whatever right, title, or interest of the IRS was transferred to the successor purchasers (City & Burns) whether the IRS claims against the Allisons and their properties were valid or invalid. The Allisons have alleged, from the outset, that the IRS actions were illegal, improper, and fatally flawed, both in their administrative actions and in the federal court actions.

The Allisons are attempting to regain all right, title, and interest in their properties, as well as actual physical possession, from the purchasers at the IRS sale, through a state court Quiet Title action against only the named Defendants, the City of Forsyth and Larry Burns.

Under federal law, the Plaintiffs have only two options to regain possession of the property taken by the IRS, under the agency's search, seizure, and sale provisions, in the case of an alleged federal tax deficiency. The Allisons can bring an action,against the United States (IRS), under Section 26 USC 7426, for wrongful levy and a refund, only after first paying the full amount the IRS alleges is due (more than $60,000.00) or they can bring a Quiet Title action against the subsequent purchasers, under 28 USC 2410, to quiet title to their property. That statute gives the Allisons a jurisdictional choice to

sue in either federal or state court. The Allisons chose to sue in state court. The U.S. IRS does not have to be a named party in the state court Quiet Title action and has no claim of right, title, or interest now, given that any IRS claim was transferred to the City and to Burns, as the subsequent purchasers as of the date of the out-of-county Sealed Bid Sale.

The Allisons brought this Quiet Title action in Montana District Court, Sixteenth Judicial District, Rosebud County, pursuant to Sections 79-28-101, et.seq., MCA and 70-28-103, MCA, and other applicable state laws, which is allowed under 28 USC 2410. The real proeprty involved herein was and is located in Rosebud County, Montana. the personal property involved was located in Rosebud County at the time of the seizure and was subsequently moved to Fallon County, Montana, after its purchase by Defendant Burns. Thus the real property and the personal property (muffler shop tools, equipment, inventory, and materials) remain physically located within the jurisdiction of the Montana 16th Judicial District Court.

In attacking the right, title, and interest claims of the successor purchasers, the City and Burns, the Allisons did raise, in their Complaint numerous flaws and defects in the IRS proceedings which led up to the search, seizure and sale of the real and personal properties which are the subject of this lawsuit. Among those defects identified by the Allisons were: the sale of the seized property was conducted out-of-county, which is a violation of the law; a lack of procedural due process and procedural defects; violations of statutes and the implementing rules and regulations; lack of jurisdiction, authority, and venue over Ronald J. Allison, both in rem and in personam, by the IRS; failure of the U.S. Attorney to follow the rules of procedure; and the uncinstitutional application of certain segments of the IRC and the IRS' implementing rules and regulations against Petitioner Ronald J. Allison.

The net result of these violations of law, rules, regulations, and procedure, by the IRS, is that the current Defendants (City and Burns) as the subsequent purchasers of any IRS right, title, or interest, have now asserted their alleged property rights over the real and personal properties of Ronald J. and Martha J. Allison, as well as those of creditors and lienholders with superior and priority interests over the IRS, regardless of whether the IRS interests were validly obtained.

The IRS, even though cognizant of both administrative appeals and federal court cases with regard to the property involved, chose to proceed with an out-of-county Sealed Bid Sale. The Defendants, City of Forsyth and Larry Burns, were advised, by the IRS, in the Notice of Sealed Bid Sale, of what they were purchasing and that the IRS was not guaranteeing title and would not defend such title after the sale. The purchasers were well aware of the difficulties such a purchase could entail. They paid much less than the fair market value, which resulted in an IRS assisted conversion. However, once the sale was conducted, the IRS no longer held any right in the Allison's properties. The named Defendants now hold any such right, title, or interest that the IRS once claimed, through their knowledgeable purchases. As such the Allisons have sought to quiet title, in state court, against the City and Burns.

The Allisons filed their Complaint for Quiet title, on September 8, 1997, and thereafter served Burns and the City through its mayor, Robert Martinek. The Defendants have never filed an answer but have filedonly motions to dismiss. The District Court Judge granted those motions, without prejudice and the Allisons appealed that decision to the Montana Supreme Court. The Montana Supreme Court affirmed the decison of the District Court Judge. The Allisons maintain that the decisions of the Montana courts below are in direct conflict with numerous other decisions of both other state courts and the federal courts.

Because of these ocnflicts of laws and decisions between the Montana courts and the many other jurisdictions around the country, the Allisons are now appealing, through this Petition for Writ of Certiorari to the United States Supreme Court.

Upon learning of Burns removal of most of the personal properties involved and upon being notified that the City intended to remove other personal property and modify the real property, sought a Temporary Restraining Order from the court to prevent further injury to the Allisons' property while this matter was being litigated. After waiting some time, the Allisons requested a ruling from the judge, Keller. Finally, on October 22, 1997, Judge Keller did issue an Order denying the request for temporary relief. Then, on October 29, 1997, Judge Keller issued an Order in which he dismissed, without prejudice, the Quiet Title actions of the Allisons against the City of Forsyth and Larry Burns.

The Allisons then sought to appeal that decision of Judge Keller to the Montana Supreme Court. The Allisons submitted their opening brief on December 11, 1997, and a Reply Brief on March 17, 1998. The Montana Supreme Court then issued its decision in the case, affirming the District Court's decision, on June 9, 1998.

Maintaining there is a direct conflict of law and decisions, between the Montana courts below and other state and federal courts, the Allisons are now seeking discretionary review, through a Petition for Writ of Certiorari to the United States Supreme Court. That Petition is both timely and appropriate, given that the Allisons have no other recourse and all issues to date, have been decided by the Montana Supreme Court. The fate of this case now lies properly before the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

Petitioner maintains that the Courts below erred in: not granting the Petitioner relief in the Montana state court Quiet Title action against the City of Forsyth, Montana, regarding certain of Petitioner's real properties and against Larry Burns regarding certain of the Petitioner's personal properties; in not granting the Temporary Restraining Order; and for dismissing the action, without prejudice, against the Petitioner in this state Quiet Title action.

Petitioner maintain that a Montana state court Quiet Title action is the proper forum for them to regain their right, title, and interest in certain real and personal properties that were seized and then sold by the IRS to the City and to Burns. They maintain that this action is being properly brought against the proper Defendants, the City of Forsyth, Rosebud County, Montana, and Larry Burns dba Larry's Service Center, of Baker, Montana, as the subsequent purchasers of any alleged right, title, or interest claimed by the U.S. IRS, and then sold via an out-of-county Sealed Bid Sale. Allisons have a right to bring a state court Quiet Title action against any subsequent property purchasers. Allisons are not restricted to only using the federal courts for relief. They do not have to bring into this action the United States or its agency, the IRS. The named Defendants are well aware of their role and position in this case and what they did, as subsequent purchasers of any IRS claims to the Allisons' proeprties.

The Allisons had certain real and personal property, as was outlined in the Complaint, that was seized and then sold in an out-of-county IRS Sealed Bid Sale. The named Defendants were the successor purchasers from the IRS of the IRS's interests (if any) in the Allison properties. As a result of this seizure and sale, the Allisons were left with two (2) possible avenues of remedy.

One remedy, which is not in any way exclusive, under federal law at 26 USC 7426, authorizesan action and relief available for a taxpayer against the U.S. for property that was wrongfully levied upon. However, in that case, the Allisons would have to first pay all of the alleged IRS tax deficiencies first (in excess of $60,000) and then wait some six (6) months before taking action against the IRS. The Allisons chose not to do so and cannot afford to do so, given the IRS seized and sold their primary source of income.

The secondremedy available, under the circumstances, is for the Allisons to file a Quiet Title action, pursuant to 28 USC 2410, and such action can be brought against the subsequent purchasers (City and Burns) without naming the U.S. or the IRS. Such Quiet Title action can be brought in either state or federal court, but it interprets state property law, as there is no federal Quiet Title action. The Allisons chose to sue, in a Montana state court action, under the Quiet Title provisions of Montana, Sections 79-28-101, et. seq., MCA and sought state court venue under Section 70-28-103, MCA.

The Allisons sued both the City of Forsyth, Rosebud County, Montana, and Larry Burns dba Larry's Service Center, of Baker, Montana, as they learned that these two Defendants were the successful bidders for the Allisons' real and personal properties sold by the IRS in an out-of-county Sealed Bid Sale on August 20, 1997. The courts below dismissed the complaint, and the Allisons are now appealing those decisions to the U.S. Supreme Court. Case law supports the Allisons.

In Rombough v. Miller, Case No. 90C-10077-1, (Oregon, 1991), that court specifically held that a sale conducted under 26 USC 6331, by the IRS, could be attacked in a state court Quiet Title action. The IRS invoked 26 USC 6331 in their actions against the Allisons. Section 6331 is

strictly a provisional remedy. U.S. v. National Bank of Commerce, 472 U.S. 713 (1985). A provisional remedy is by definition a temporary remedy. To quote Justice Black, "a temporary process available to a Plaintiff in a civil action which secures him against loss, irreparable injury, dissipation of the property while the action is pending".

As noted by the Court in U.S. v. New England Merchant's National Bank, 465 F. Supp. 83 (1979), the final judgment in an IRS levy action settles no rights in property subject to seizure. One cannot launch an attack on the assessment process in the state court Quiet Title action. However, here we are dealing with a sale, not an assessment. Allisons concern is with their respective interests in real and personal property sold to these Defendants by the U.S. IRS, allegedly acting under the authority of 26 USC 6331. The Allisons could have brought action against the United States, under 26 USC 7426, the wrongful levy provision, but they are not obligated to do so.

Allisons are also entitled to bring suit under 28 USC 2410 to quiet title to their property. That statute gives the Allisons a specific jurisdictional basis to sue in either state or federal court. they chose state court.

Specifically, Section 28 USC 2410 states:

"Actions affecting property on which United States has a lien (a) under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any state court having jurisdiction of the subject matter---

(1) to quiet title to
(2) to foreclose a mortgage or other lien upon,
(3) to partition, ..."

As noted before, as exemplified by the National Bank of Commerce case, 26 USC 6331 is s strictly provisional remedy afforded to the U.S. in its tax collection efforts. It does not, by any stretch of the imagination, purport to determine title to a piece of property. This is very clearly illustrated by the language found in the IRS Notice of Seizure and Sale forms used in the IRS process and upon which the named Defendants have relied. Those particular IRS forms specify to any prospective purchaser that the U.S. is only selling any right to and interest in property the "taxpayer" might have. The Notice of Seizure states:

> "Under the authority in section 6331 of the Internal Revenue Code, and by the virtue of a levy from the District Director of the Internal Revenue of the district shown below, I have seized the property below for nonpayment of past due internal revenue taxes".

The Notice of Sealed Bid Sale specifically states:

> "The right, title, and interest of the taxpayer in and to the proeprty is offered for sale subject to any prior outstanding valid mortgages, encumbrances, or other liens in favor of third parties against the taxpayer that are superior to the lien of the United States. All property is offered for sale "where is" and "as is" and without recourse against the United States. No guaranty or warranty, express or implied, is made as to the validity of the title, quality, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim will be considered for allowance or adjustment or for recission of the sale based on failure of the property to conform with any express or implied representation".

It is entirely proper for a person to attack a tax sale from procedural grounds. As Reese v. Scoggins, (CA-5)Fifth Circuit, 506 F2d 967, (1975)

notes, the sale of a proeprty is the most potent weapon in the government's collection arsenal. Therefore it is incumbent upon the government to comply with all the required steps in using this weapon. The Allisons have alleged a number of the steps required were not compled with. The IRS was well aware that there were other priority interests in the property, such as creditors and lien holders. The IRS Officer, Ms.Bouldin, made it clear in her affidavit to the Court, for a Writ of Entry, that she was aware of priority creditors and lien holders. She was also aware that the IRS was seeking to collect for alleged income tax deficiencies of Ronald J. Allison, yet she and the IRS proceeded to not only search, but to seize and sell real property of Martha J. Allison, against which the IRS had no case, to satisfy the alleged IRS debt of Mr. Allison. Agent Bouldin, alone, determined that Martha J. Allison was the "nominee of" or the "alter ego of" alleged delinquent "tax payer" Ronald J. Allison. There is not one shred of evidence that any court has ever reached the same conclusion.

Bouldin and her IRS cohorts proceeded, anyway, with the search, seizure, and sale of Martha J. Allison's property, against whom they had no case, whatsoever. Whether the IRS made this decision with regard to the Allisons, from reading tea leaves, a ouija board, or some other metaphysical device unknown to ordinary mortals, it is clear the IRS ignored the laws of real property as they exist in Montana.

As to the personal property of Ronald J. Allison, (i.e. muffler shop tools, equipment, machinery, and inventory, etc.,) the IRS was well aware of the existence of several U.C.C liens filed on that property and against Ronald J. Allison.

In addition, the IRS and Agent Bouldin specifically were very aware of the numerous challenges of Ronald J. Allison to the jurisdiction, authority, and venue over him and his property by the IRS, prior to the seizure and sale. Yet,

to date, even in these proceedings, the IRS has never responded to those challenges and has not ever proven or provided any evidence, whatsoever, that it does have any legal jurisdiction or authority over Ronald J. Allison or the subject real and personal properties.

Another case, World Marketing, Ltd. v. Hallam, 608 F.2d 392, (1979) pointed out that Plaintiffs, like the Allisons are not limited to pursuing a claim against the U.S. for a wrongful levy. The property, in that case, was a sailing vessel (personal property) and the issue of title of the vessel, as between the parties, presented a question of state law. The court found, that a party from whom a sailing vessel was seized, in satisfaction of a tax liability was not limited to pursuing a claim against the U.S. for wrongful levy and sale of the sailing vessel, but could also maintain a Quiet Title action, under state law, against the transferees of the tax sale purchaser.

The Tenth Circuit's decision in Crow v. Wyoming Timber Products Co., 424 F.2d 93, (1970), supports Allisons' position that 26 USC 7426 does not preclude one with an interest in property seized and sold by the U.S. from pursuing a claim against a subsequent purchaser in a state court. In that case, Plaintiff, claiming to be the true owner of timber levied and sold by the IRS for a third party's failure to pay taxes,filed a replevin action against the purchaser in state court. It was held that the removal of the case to federal court was improper and the replevin action was remanded to the state court. The Crow court noted the inapplicability of Section 7426 to Defendants other than the U.S. and recognized the availability of relief against purchasers of levied property in state law. The U.S. Supreme Court should clarify the differing decisions below. This case presents a state law question because the state, rather than federal law, determines the nature and extent of the interest in property to which a federal tax lien can attach.

The impropriety of removal of actions, as the Montana courts below would have occur here, was reflected in National Bank & Trust Co. of South Bend v. U.S., 589 F.2d 1298 (1978). There the court declined pendant jurisdiction over claims brought by a lienholder bank against five private defendants regarding property levied and sold by the IRS. The case also supports the view that claims against the U.S. under 7426 are distinct from claims against individuals, and that both can spring from a seizure and sale by the IRS.

One with an interest in property wrongfully levied by the U.S. has a cause of action against a subsequent purchaser. Omnibus Financial Corp. v. U.S., 566 F.2d 1097 (1977). That court did suggest that a suit against the U.S. under 7426 and an action against the purchasers were possible alternatives for owners whose property was wrongfully seized and sold.

It is well established that state law does determine property rights. See Aquilino v. U.S., 363 U.S. 509 (1960), Crocker National Bank v. Trical Manufacturing, Co., 523 F.2d 1037 (1975), and Babb v.Schmidt, 496 F.2d 957, (1974). Thus, title to the real and personal proeprty in this case, as between the Allisons and the City of Forsyth and Burns, presents a question of state law. See also California v. California & Hawaiian Sugar Co., 588 F.2d 1270 (1978).

Allisons have alleged that the Defendants (City & Burns) assert a right, title, or interest in their property as purchasers of the property which was sold by the IRS. Allisons have also alleged that the procedures employed by the IRS were fatally flawed and insufficient to subject any of their right, title, or interests to a seizure and sale by the IRS so as to vest any right, title, or interest in the property in the Defendant purchasers. Allisons seek an adjudication that they are the owners and are entitled to the present possession of the subject real and personal properties, and that the Defendants have no right, title, or interest in the property.

The U.S. is not a party nor a necessary party to this action. this case is not an action against the U.S. It is an action against private parties, in state court. Section 26 USC 7426 has no bearing on this matter and does not preempt the state court's jurisdiction to hear and determine the action under state law. World Marketing, Ltd. v. Hallam, 608 F.2d 392 (1979).

In addition, should the defendants decide that the IRS is a necessary party, they can move to add them to the case. But, this case should not fail because the Allisons have failed to join the IRS as a party to their action. In Bell v. Hood, 327 U.S. 678, the court determined that the "party who brings suit is master to decide what law he will rely upon and does determine whether he will bring a suit arising thereunder."

With regard to the faults of the IRS in their actions against the Allisons, it should be very clear that it was wrong for the IRS to seize and sell real property titled in and belonging to Martha J. Allison, solely, in an attempt to satisfy the alleged income tax deficiency of her spouse, Ronald J. Allison. In Raffaele v. Granger, 196 F.2d 620 (1952), the court held that, "The United States cannot take property from an innocent spouse to satisfy the tax obligation of a delinquent spouse", and further that, "A statute prohibiting suit to restrain collection of taxes does not prevent judicial interposition to prevent the collecter of internal revenue from taking the property of one person to satisfy the tax obligations of another".

Petitioner Ronald J. Allison has, on a number of occasions, challenged the authority, venue, and jurisdiction of the IRS, to no avail. He did specifically challenge that jurisdiction, venue, and authority with IRS Agent Bouldin, prior to her actions instigating the search, seizure, and sale. The result was that the IRS siezed and sold property not only belonging to Ronald but also property belonging to Martha Allison, against whom the IRS has never had a case or controversy.

Mr. Allison's challenges to the IRS have never been addressed, either through the IRS administrative actions or through the courts. No one wants to deal with those challenges. His challenges have included:

(a). Demand for Proof of Authority, Jurisdiction, & Venue in Personam and In Rem, date November 6, 1996, and served on IRS Agent Bouldin by certified mail.

(b). Affidavit of Facts Establishing Status of Citizenship, dated March 31, 1992, and filed in the Clerk & Recorder's Office in Rosebud County, Montana.

(c). Affidavit & Notice of Ronald J. Allison, Affidavit of Declaration of Title as Holder of Quiet Title to One's Self, and Social Security Revocation, all dated July 4, 1984, and which were served by certified mail upon the IRS, Social Securi y Admin., U.S. Attorney General, Health & Human Services, Treasury, the Governor of Montana, Montana Treasurer, Montana Revenue Dept., and Mr. Allison's employer, at the time, Bechtel Construction.

To date, the IRS has never addressed any of these challenges and has never established any jurisdiction over Mr. Allison or his property. The Courts below have never addressed these issues either. Once challenged, the party attempting to prove jurisdiction must come forward with evidence. Regarding Mr. Allison, the IRS has never done so.

Mr. Allison has also alleged that the liens, levies, seizure and sale of the subject real and personal properties were fatally flawed and filled with procedural defects, and as such should be void. As against Ronald J. Allison, there has never been a valid:

(a.) court ordered Warrant of Distraint;

(b.) court ordered Summons;
(c.) response to requests for Records of Assessments (Form 23C's);
(d.) Certificates of Assessments and Payments (Form 4340's);
(e.) Certification of Transcript(Form 2666's)
(f.) Form 17A's pursuant to 26 USC 6203 and CFR 301.6203.
(g.) Notice of Deficiency (Sent by certified or registered mail with proof of receipt)
(h.) Notice of Assessment(sent within 60 days after assessment, under 26 USC 6303;
(i.) Entry of Judgment, pursuant to FRCP 58;
(j.) Writ of Execution, pursuant to FRCP 69;
(k.) Memorandum or Affidavit in Support of Writ of Entry Application, served upon the Allisons.
(l.) Sale of the seized property, inside the county located, violating 26 USC 6335;
(m.) Fourth Amendment search Warrant, with an Application & Affidavit in Support, as required under the Constitution;
(n.) Due Process procedural hearing either before or after the seizure;

Pursuant to the statutory requirements of 26 USC 6201,6203, and CFR 301.6201 and 301.6203, no valid Summary Record of Assessment has been filed. Absent an assessment, there is no debt, as the debt only attaches when the assessment is properly made. Bull v. U.S., 295 U.S. 247 (1935) and for a tax liability to be duly collectible, it must have been properly assessed. In Re Western Trading, 340 F.Supp. 1130 (1972); Estate of Goetz v. U.S., 286 F. Supp. 128 (1968).

These statuory procedures must be followed in the process of administratively collecting taxes.U.S. v. Berman, 825 F.2d 1053(1987). Congress has set forth precise requirements for notice of seizure & sale of property in tax deficiency cases. "When the government seeks to enforce the laws, it must follw the steps Congress

has specified." Goodwin v. U.S., 935 F.2d 1061 (1991). There must be strict compliance with the notice requirements of statutes governing seizure and sale of property for delinquent taxes. The IRS is required to issue deficiency notice following termination of assessment when a taxpayer fails to file a return. Perlowin v. Sassi, 711 F.2d 910 (1983).

It is well established law that in order to have a valid sale, there must be a valid seizure; and to have a valid seizure, there must be a valid lien; and to have a valid lien, there must be a signed 23 C Summary Record of Assessment and a Form 4340 Certificate of Assessments & Payments, before there is a valid assessment.Coplin v. U.S., 952 F.2d 403. Assessments, deficiencies, and levies must be procedurally correct. Rodrigez v. U.S., 729 F. Supp. 333. An assessment is illegal and void if no required valid deficiency notice is sent to the taxpayer. U.S. v. Williams, 161 F. Supp. 158 (1958). Whereas the IRS has not sent a valid notice as required under 26 USC 6303(a), within 60 days of the alleged assessment, the IRS is not in compliance with its own internal procedures. This is a violation of administrative law and voids the agency action. U.S. v. Heffner, 420 F.2d 809 (1972). Actions by an agency in violation of its own regulations and procedures are illegal, void, and constitute procedural error. VanderMolen v. Stetson, 571 F.2d 617 (1977).

Furthermore, Mr. Allison has maintained, from the outset, and the IRS has never presented any evidence to the contrary, that the IRC Sections used by the IRS are being unconstitutionally applied to him and his property and that their implementing rules and regulations do not apply to him. Mr. Allison is not a resident of the District of Columbia or any federal enclave or instrumentality and is not within any class of persons upon whom the IRS has the authority to impose a mandatory income tax.

Mr. Allison is not within the class of persons subject to levy and distraint authority of the IRS. Under Section 26 USC 6331, the IRS has

"limited" levy and distraint authority. It states:

> "Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia..."
>
> Under 26 CFR 301.6331-1a(ii):
> "Salaries, wages, and other compensation of any officer, employee or elected or appointed official of a state or territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to the levy to enforce collection of any federal tax.;
>
> (iii): Wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy."

Mr. Allison is not among any of those categories or classes of people over whom the IRS has any legal authority or jurisdiction. They did not have authority for levy and distraint. They did not have authority for seizure and sale. For all intents and purposes, Mr. Allison is a "non-resident" to the state of the forum of the U.S. IRS.

The Supreme Court has previously ruled that the "income tax" is an "excise tax", which is synonymous with a "privilege tax". He is not asserting any privilege, but only his Constitutionally protected rights. Since his not exercising any privilege, there can be imposed no "privilege/income" tax. The conclusion reached in Pollock v. Farmers Loan & Trust Co., 158 U.S. 601 (1895) that taxation on income was, in its nature, an excise tax remains in effect and should be enforced as such. Brushaber v. Union Pacific Railway Co., 240 U.S. 1. (1916) The term "excise tax"is synonymous with "privilege tax" and the

two have been used interchangeably. Foster & Co. v. Graham, 154 Tenn. 412.

The Court, in Idaho held , in Idaho Gold Dredging Co. v. Balderston, 58 ID 692, that,

> "There can be only two types of taxes in the United States. A tax must be either a direct tax, in which it is subject to the rules of apportionment, or a privilege tax. A priviliege tax can never be imposed upon an exercise of a right under the constitution. The obligattion to pay an excise tax is based upon the voluntary action of the person being taxed in performing the act, enjoying the privilege, or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking."

If you don't want to pay the tax, simply don't exercise the privilege. People ex rel. Attorney General v. Naglee, 1 Cal 232. The income tax is not a tax on income, but a tax imposed upon a privilege, measured by income. In Flint v. Stone Tracy Co., 220 U.S. 107 (1911) the Court held:

> "Excises are taxes laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain regulated occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of privilege....."

An individual, like Mr. Allison, unlike the corporations, cannot be taxed for the mere privilege of existing and exercising his constitutional rights. The corporation is an artificial entity which owes its very existence and charter power to the government. But, the individual's right to live and own property are natural rights, for the enjoyment of which an excise tax cannot be imposed. Redfield v. Fisher, 292 OR 814. The legislature cannot name something to be a taxable privilege unless it is first a privilege. . . . "The right to receive income or earnings is a

right belonging to every person and realization and receipt of income is therefore not a privilege that can be taxed." Jack Cole Co. v. McFarland, 337 SW2d 453.

The actions the IRS has taken against Mr. Allison are not authorized by law. They did not just exceed their jurisdiction and authority, they have none. "Adistinction must be here observed between excess of jurisdiction and the clear absence of all surisdiction over the subject matter. Any authority exercised is usurped authority and for the exercise of such authority when the want of jurisdiction is known to the judeg, no excuse is permissible." Bradley v. Fisher, 13 Wall. 335. "An exaction by the U.S. government, which is not based in law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the constitution..." 26 CFR 601.106. The rights of Mr. Allison to be protected agianst the ineffective levies, liens, and seizures, prior to due process oflaw, is recognized in the Fifth Article in Amendment to the original organic United States Constitution. Further, the Allisons were subjected to unreasonable searches, in violation of the Fourth Article in Amendment to the United States Constitution.

The IRS is not immune from the mandates of the constitution. U.S. v. James Daniel Good Real Property, 114 S.Ct. 498 (1993). In Fuentes v. Shevin, 407 U.S. 67 (1972), the court held that "Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the government deprives them of property." "Prejudgment attachments of property are unconstitutional in union states, not withstanding any statutes to the contrary." Sniadach v. Family Finance Corp. of Bay View, et.al., 395 U.S. 337. The Constitution of the United States is the supreme law of the land, admitting no exceptions and any statute to the contrary is null and void in the United States.(16 Am Jur 2d 177)

Given the fatal flaws of the IRS in the pro-

cedures during the search seizure, and sale, any right the IRS may have obtained is fraudulent and thus, the right, title, or interests of the successor Defendant purchasers (City & Burns) are also fraudulent and defective. The Defendants have a duty to present evidence of their claims to title in a state Quiet Title action. In Tree v.White, 171 P2d 398 (Utah) (1946), that court found that:

> "When one relies on a tax title and pleads ownership founded on tax title, he must show by his pleadings that every essential step in the tax proceedings to divest the owner of title has been conducted according to law.", and further that:
>
> "Where plaintiff in suit to quiet title alleged title in herself, and defendants pleaded ownership by virtue of tax title, but proof established that only one auditor's affidavit was attached to the assessment roll instead of the two required by statute, the plaintiff was entitled to prevail on reimbursement of defendant, since there was no valid sale for taxes."

Furthermore, the court in Kelly v. Lunding, 474 N.E.2d 1093 (1985) held that the burden of showing literal compliance with statutes governing sale of land for taxes is upon the claimant under the tax sale. The statute setting forth the method and procedure for giving notice of seizure of property for unpaid federal taxes must be substantially complied with by the IRS before tax deed "shall be considered and operate as a conveyance of all right, title, and interest" of the delinquent taxpayers's interest in the property. Johnson v. Gartlan, Jr., 334 F.Supp. 438 (1971) and McAndrews v. Belknap, 141 F.2d. 111 (1941).

Petitioners and Respondents both claim ownership of the same real and personal properties. Respondents' claims are based solely upon the IRS tax sale. Yet, Respondents cannot document every essential step in the IRS tax proceedings used to divest the rightful

owners, the Allisons of their property. The Defendants cannot prevail on the Quiet Title action, because they cannot show compliance with the mandates of statutory and case law and the implementing rules and regulations. Premature dismissal, as the Courts below have ruled, without the presentation of such evidence, by both parties is an injustice and should not be condoned by this Court.

Even if a Director's Deed and Certificate of Sale is presented, they cannot stand by themselves. As the Tree v. White court found, the Defendants, whose only claim to the Allison properties is through tax sale and tax title, must show, by their pleadings, that every essential step used by the IRS to divest the Allisons of their property has been conducted according to law. The Defendants cannot do so. such evidence cannot be presumed to exist, it must be proven.

The Sale by the IRS was not conducted in compliance with 26 USC 6335(d), which states, in part:

> "...The place of sale shall be within the county in which the property is seized, except by special order of the Secretary or his delegate."

Defendants purchased their interests in a Sealed Bid Sale conducted in Yellowstone County for the Rosebud County properties of the Allisons.

Both 26 USC 6339 , which deals with the Director's Deed being a conveyance of title, and 26 USC 6338, which deals with the Certificate of Sale for personal property, mandate that the tax proceedings shall be "substantially in accordance with the provisions of law". Thus the deed cannot convey real property title and the Certificate of Sale cannot legally and effectively convey title to the personal property.

It should also be noted that the seizure of the real and personal property was conducted

at gunpoint, by IRS and ATF agents, without a Fourth Article in Amendment Search Warrant, a protection that even criminals are afforded. Thus, the Allisons Fourth Amendment rights were clearly violated. The seizure was also conducted by the armed IRS/ATF agents without the recognized authority of the U.S. Marshalls, the local elected County Sheriff, or any appointed Deputy Sheriff.

It should be noted that the Allisons have been very active in attempting to protect themselves from the wrongful actions of the IRS, even before instigating this action. The Allisons made Freedom of Information Act (5 USC 552) and Privacy Act (5 USC 552a) requests to the IRS in July of 1996, to gain access to the information the IRS was using to make its determinations against the Allisons. As of the date of this Petition, no satisfactory answers have ever been received from the IRS. Much of the evidence needed to prove their Quiet title claims is in the possession of the IRS. Even instituting a federal court action did not force the IRS to fully and completely disclose the information the Allisons sought. The Defendants would also need the same information in order to prove their claims of onwership of the subject properties.

The Allisons again requested, under Freedom of Information and the Privacy Act, from the IRS specific other documentation, in February, 1998, and there has not been full compliance with those requests. In part, the Allisons requested copies of the Director's deeds and the Certificates of Sale. Neither has been provided, to date. The continuation of this case would provide some discovery mechanisms to gain access to the material sought. Premature dismissal, as the courts below have ruled prevents all parties concerned from gaining access to the truth.

Finally it should also be noted that the Allisons are proceeding Pro Se, as they cannot afford or find private counsel to represnt them.

Both named Defendants, the City and Burns have obtained private counsel. Both the City 's attorney and Burns attorney have failed to comply with the rules of procedure with regard to filing timely documents with the court. They are not and have not been in compliance with the Montana procedural rules, yet there appears to be a double standard between people who have counsel and thos who do not. Montana Supreme Court has clearly made a distinction in their treatment of the parties, represented and unrepresented. The Allisons are well aware that, should they have been untimely at any stage in the proceeding, their case would have been dismissed. The Defendants and their attorneys are allowed to violate the operating rules with impunity by the Supreme Court. The Rules of Appellate Procedure should apply to each party equally. Should the rules be applied fairly and strictly, neither of the Defendants would have been allowed to file their responsive briefs in the Supreme Court of Montana.

CONCLUSION

In conclusion, the Petitioners, Ronald J. Allison and Martha J. Allison maintain that the actions and decisions of the Montana District Court and the Montana Supreme Court were erroneous in dismissing this Montana state Quiet Title action and in denying the Allisons' requests for temporary relief as against these named Defendants.

The Allisons maintain that they have a right to bring a state court Quiet Title action to determine the respective legal right, title, and interests of themselves and the subsequent purchasers of the subject real and personal property, the City of Forsyth and Larry Burns, who purchased at an IRS sale after an IRS levy, search and seizure.

The Allisons have maintained that there are numerous fatal flaws and defects in the IRS actions and proceedings which have culminated with the sale of the subject properties to these named Defendants. The Defendants should be required to defend their claims of right, title, and interest, which involves their defense of each step taken by the IRS in divesting the Allisons of their property. When such an examination does occur, the claims of the named Defendants will be shown to be defective.

The Allisons maintain that the IRS is not a necessary party in this state court Quiet Title action between private parties both claiming some right, title, or interest in the same property. The IRS no longer has any claim against or to the property having disposed of their interests at the time of their flawed out-of-county sealed bid sale.

The Allisons maintain that state court is the proper forum for this action and that the Quiet title action is the proper action, and that they have the proper parties before the Court.

The Allisons are entitled to have this matter heard in state court, as against these named Defendants, the City of Forsyth and Larry Burns, as the subsequent purchasers of any IRS interest or claim, and further, upon an examination of the substantive issues and the fatal flaws and defects of the IRS proceedings, to be granted the relief originally requested in the Complaint to Quiet Title.

The courts below are in error and the errors should be reversed, with remand to the state court for an examination of the substantive issues raised in the Complaint. The Allisons have already suffered irreparable injury as a result of the actions of the IRA and these Defendants. To fail to act on this Petition for Writ of Certiorari will result in even more irreparable injury to the Allisons, who are now being even denied the means for providing for the necessities of life. To fail to act will demonstrate a manifest injustice to the Allisons.

Respectfully submitted this 31st day of August, 1998.

Ronald J. Allison

Ronald J. Allison
Petitioner Pro Se
390 North 10th Avenue
P.O. Box 661
Forsyth, MT 59327
1-4-6-356-2904

DOCKET NO.

IN THE

SUPREMECOURT OF THE UNITED STATES

October Term, 1997

RONALD J. ALLISON &
MARTHA J. ALLISON,

Petitioners,

vs.

The Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns and Larry's Service Center, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership or any cloud upon Plaintiffs' title thereto and sole ownership thereof, whether such claim be present or contingent, including any claim or possible claim of dower, inchoate, or accrued,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the United States From the Supreme Court of Montana

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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1-406-356-2904

APPENDIX

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No. 97-641

IN THE SUPREME COURT
OF THE STATE OF MONTANA

1998 MT 141N

RONALD J. ALLISON &
MARTHA J. ALLISON
Plaintiffs/Appellants,

v.

The Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Rosebud County, Montana; LARRY BURNS and LARRY'S SERVICE CENTER, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate or interest in or lien upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto, and sole ownership thereof, whether such claim be present or contingent, including any claim or possible claim of dower, inchoate, or accrued,

Defendants/Respondents.

APPEAL FROM: District court of the Sixteenth Judicial District, In and For the County of Rosebud, The Honorable Robert S. Keller, Judge presiding.

COUNSEL OF RECORD:
For Appellant:
Ronald J. Allison, Forsyth, Montana (pro se)

For Respondent:
A. Lance Tonn, Miles City, Montana (City); *Gary Ryder, Hysham, Montana* (Burns)

Submitted on Briefs: March 26, 1998
Decided: June 9, 1998

Filed:

/s/
Ed Smith
Clerk

FILED

JUN 09 1998
/s/
Ed Smith
Clerk of Supreme Court
State of Montana

Justice William E. Hunt, Sr. delivered the opinion of the Court.

1. Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Operating Rulse, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number, and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases by this Court.

2. Ronald and Martha Allison (the Allisons), pro se, appeal from the order and entry of judgment of the Sixteenth Judicial District Court, Rosebud County, granting motions to dismiss in favor of the City of Forsyth (the City) and Larry Burns d/b/a Larry's Service Center (Burns)(collectively the Defendants). We affirm.

3. This lawsuit concerns certain real and personal property once owned by the Allisons and later seized by the United States Internal Revenue Service (IRS) as the result of a dispute over unpaid federal taxes. At a U.S. Marshall's sale, the IRS sold the real property to the City and the personal property to Burns. The Allisons filed a suit to quiet title to the real and personal property naming as defendants "The Unknown Heirs, Assigns, Devisees, and Creditors of the City of Forsyth", Larry Burns, and-Larry's Service Shop. The Allisons based their quiet title action on allegations that the IRS committed a number of illegal and/or inappropriate acts during the seizure and sale of their property; that the seizure and sale of their property was therefore wrongful; and that the Defendants were "receivers of stolen property."

4. The City and Burns filed motions to dismiss on the grounds that the United States was an indispensable party and that the Allisons had failed to state a claim upon which relief could be granted. The City listed the additional ground that the Allisons failed to name the City as a defendant to the action. The District Court granted the Defendants' motions do dismiss and the Allisons appealed. The sole issue on appeal is whether the court erred in granting the Defendants' motions to dismiss.

5. Having reviewed the record, we determine that the District Court did not err in dismissing the Allisons' complaint. first, the United States is an indispensable party to this case. although the complaint requests that the Defendants be divested of all right and title to the real and personal property and pay damages, the facts forming the basis of thecomplaint essentially boil down to wrongdoing on the part of the IRS. An action for wrongful levy against the IRS must be brought in federal court. See 26 U.S.C. 7402, 7421, and 7422. The Allison's reliance on 28 U.S.C. 2410 to establish juris-

diction in state court for IRS wrongdoing is misplaced. Title 28, section 2410 of the United States Code provides that the United States may be named a party in any state court having jurisdiction over the subject matter to quiet title to real or personal property on which the United States has or claims a mortgage or other lien. The Allisons' complaint does not name the United States as a party and fails to allege that the United States currently has a mortgage or lien on the property in dispute. Thus, 28 U.S.C. 2410 is inadequate to support the Allisons' claim of state court jurisdiction.

6. Second, the complaint fails to state a claim upon which relief may be granted.

> In considering a Rule 12(b)(6) motion to dismiss, the allegations must be viewed in a light most favorable to the plaintiff, admitting and accepting as true all facts well-pleaded. Further a court should not dismiss a complaint for failing to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or claim which would entitle him or her to relief.

Farris v. Hutchinson (1992), 254 Mont. 334,336, 838 P.2d 374, 375.

> A motion to dismiss under Rule 12(b)(6), M.R.Civ.P., only tests whehter a claim has been adequately stated in the complaint. Therefore, the court's inquiry properly is limited to the content of the complaint.

Gebhardt v. D.A. Davidson & Co.(1983), 203 Mont. 384, 389, 661P.2d 855,857-58.

Again, the facts forming the basis of the complaint essentially state a potential claim for relief against the IRS, not the Defendants. The Defendants were bonafide purchasers of real and personal property. The complaint lacks a state-

ment of facts supporting the allegation that the Defendants are receivers of stolen property. Additionally, we note that the Allisons failed to identify the City as a party to the action, choosing instead to name only the City's heirs, assigns, devisees, and creditors. Having viewed the allegations in the light most favorable to the Allisons, and accepting the stated facts in their complaint as true, we conclude that the Allisons can prove no set of facts entitling them to relief against the City or Burns, and that dismissal of the complaint was proper.

7. Affirmed.

/s/
William E. Hunt, Sr.
Justice

We Concur:

/s/

/s/
Terry Trieweiler

/s/
Karla M. Gray

/s/
W. William Leaphart
Justices

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT,
ROSEBUD COUNTY

RONALD J. ALLISON &
MARTHA J. ALLISON,

Cause No.: DV-97-124

Plaintiffs,

vs.

The Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns & Larry's Service Center, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto and sole ownership thereof, whether such claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued,

Defendants.

ORDER

Plaintiffs filed a Complaint to Quiet Title pursuant to Section 79-28-101, MCA, against the Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Larry Burns, Larry's Service Center, et.al. The City of Forsyth moved to dismiss the Complaint for failure to state a claim against the Defendant, and the Defendant Larry Burns moved to dismiss the Complaint on the grounds that the Defendant(sic)

fails to state a claim for which relief can be granted, and on the further grounds that the Court lacks subject matter jurisdiction, and lacks jurisdiction over an unnamed essential party, to wit the United State Government, Department of the Internal Revenue Service; the Motions of both parties were supported by briefs, to which the Plaintiffs have responded; the Court being fully advised,

IS HEREBY ORDERED as follows:

1. That the Motion to Dismiss of theCity of Forsyth is granted, and the complaint is dismissed as against the City of Forsyth, without prejudice.

2. The Motion to Dismiss of Defendant Larry Burns and Larry's Service Center is granted, and the Complaint is dismissed as against them, without prejudice.

DATED this 29th day of October, 1997.

COURT SEAL
DISTRICT COURT
16TH JUDICIAL
DISTRICT

/s/
Robert S. Keller
Judge of the District Court

cc: Oct. 31, 1997 (mh)
Ronald J. & Martha J. Allison
Gary L. Day-Lance Tonn
Gary Ryder

MEMO

It is clear from the Complaint that the Internal Revenue Servie is an essential party, and the failure to join an essential party is a fatal defect. Apart from that consideration, the City of Forsyth was not only not named as a Defendant in the heading of the Complaint, but on the face of the Complaint, the City was a

bonafide purchaser for value at the IRS sale. To prove that the sale was invalid, the Plaintiff must join the IRS. The same applies for the Defendant Larry Burns, dba Larry's Service Center. Not only does the Complaint not state a claim against Larry Burns, but the Court has no jurisdiction over the subject matter (an IRS sale), and the IRS is an essential party. And, this is specifically an action to quiet title, and the only interest of Larry Burns is in personal property.

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Forsyth, MT 59327
406-356-2904

Plaintiff Pro Se

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT,
ROSEBUD COUNTY

RONALD J. ALLISON &
MARTHA J. ALLISON,

Plaintiffs,

vs. Cause No.:DV-97-124

The Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns & Larry's Service Center, Baker, Montana; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or line upon the real and personal property and property interests described in the Complaint adverse to the Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto and sloe ownership thereof, whether such claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued,

Defendants.

COMPLAINT TO QUIET TITLE

COMES NOW, the Plaintiffs, Ronald J. Allison and Martha J. Allison, and for their claim against the defendants complains and alleges as follows:

1. The Plaintiffs are the absolute, sole, and outright owner, of record, of all of the fee simple title to the land, described below, and the personal property, described below, and as such owner, are entitled to the exclusive right to possess and occupy the same and to receive all of the rents, issues, and profits therefrom.

2. Plaintiffs and their predecessors in interest in title have, for an uninterrupted and continuous period of time, in excess of 5 years immediately preceding the filing of this Complaint, open and notoriously, and with claim of right: (a) claimed the exclusive and absolute ownership of the fee simple title to the land and to the personal property; (b) occupied and possessed, to the exclusion of all others, the land and personal property, and received all rents, issues, and profits therefrom; and (c) paid all of the real estate and other property taxes assessed against and imposed upon the land.

3. The land, for which the Plaintiffs are commencing this Quiet Title Action is more specifically described as follows:

> Lot 20A, in Block G, Edward's Addition to the City of Forsyth, Rosebud County, Montana, according to Survey No. 73413, on file and of record in the office of the County Clerk and Recorder of Rosebud County, Montana.

4. The personal property for which the Plaintiffs are commencing this Quiet Title Action is more specifically described in Attachment "A" which is hereby attached hereto and fully integrated herein.

5. Venue in this Court, the Sixteenth Judicial District Court of Rosebud County, Montana, is proper, pursuant to Section 70-28-103, MCA.

6. This action is commenced pursuant to Section 79-28-101, MCA, et.seq. and other applicable Montana law, to quiet in Plaintiffs, title to and ownership of, the land, and the personal property, which said real and personal property and property interests, are located in Rosebud County, Montana.

7. Defendants above-named, and each of them, claim or may claim some right, title, estate, or interest in, or lien or encumbrance upon the above-described property and property interests, or some part thereof, adverse to the ownership, right, title, and interests of the Plaintiffs.

8. The claims of said Defendants, and each of them, are without right, validity or substance, and no Defendant, or anyone claiming by, to, or under any Defendant, or any or all of them, has any right, title, estate, or interest in or lien or encumbrance upon the property above described, or any part thereof.

9. The Plaintiffs are entitled to a Decree of this Court that:

(a) declares, establishes, determines, and vests title and ownership of the land and personal property in fee simple absolutely and exclusively in and in the name of Ronald J. Allison and Martha J. Allison;

(b) bars the claims and demands of all persons, firms, or entities, other than Ronald J. Allison and Martha J. Allison, in or with respect to the land and personal property above described;

(c) determines that whatever claim, or

claims, other persons, firms, or entities have, or purport to have, with respect to the real and personal property above-described are without substance, right, or validity, whatsoever; and

(d) no known or unknown person, firm, or entity, other than Ronald J. Allison and Martha J. Allison has any right, title, estate, or interest in or claim to, or lien or encumbrance upon the land or personal property above described.

10. Defendants allegedly purchased any rights of Ronald J. Allison and Martha J. Allison to said real and personal property through a sale held by the U.S. Internal Revenue Service.

11. The IRS sale of said property was based upon a levy and execution of the property rights of Ronald J. Allison and Martha J. Allison, as "nominee" or "alter ego" of Ronald J. Allison.

12. the purported sale of the above-described property by the IRS was invalid since the IRS violated it's own regulations and state and federal laws governing the IRS, including the following:

(a) The seized property was sold outside of the County in which the property was located, violating 26 USC 6335;

(b) The IRS failed to obtain the necessary Search Warrant, with an application and affidavit in support, as was required by law before executing the search and seizure of the subject property;

(c) No due process procedural hearings were ever held by the IRS;

(d) No Court-ordered Writ of Execution was ever issued;

(e) No Warrant of Distraint was ever issued, as is required under the Federal Rules of Civil Procedure, Rule 69;

(f) No Entry of Judgment was ever made, as is required by Federal Rules of Civil Procedure, (FRCP) Rule 58;

(g) No Court ordered Summons was ever issued to Ronald J. Allison or Martha J. Allison;

(h) No valid Notice of Deficiency was ever issued by the IRS;

(i) No valid Notice of Assessment was ever issued by the IRS;

(j) No valid IRS Form 23C, Record of Assessments was ever issued;

(k) No valid IRS Form 4340's were ever issued by the IRS;

(l) No valid IRS Form 2666's were ever issued by the IRS;

(m) No valid Form 17A's were ever issued by the IRS;

13. Plaintiffs, Ronald J.Allison, being a Natural, Soverign Citizen, is not within the authority, jurisdiction and venue of the U.S. Internal Revenue Service.

14. Plaintiff, Ronald J. Allison, is without the United States, including the District of Columbia and any federal territories, possessions, or commonwealths, as is defined in federal law and 28 USC 1746;

15. The Writ of Entry used by the IRS, in this case, is a writ of assistance, and as such, it was the wrong document for the IRS to use in their search and subsequent seizure of the Plaintiffs' property.

16. The IRS committed numerous procedural errors, including, but not limited to those outlined above,in Complaint paragraph 12, (a) through (m).

17. The Defendants, the City of Forsyth, Rosebud County, Montana, and Larry Burns, doing business as Larry's Service Center, of Baker, Montana are receivers of stolen property;

18. The Internal Revenue Service used fraud both actual and constructive, as well as lies, chicanery, and subterfuge to search and seize the real property and personal property the subject of this suit, and said actions by the IRS were done with malice and vindictiveness towards the Plaintiffs.

19. The actions of the IRS in seizing the subject property denied the Plaintiffs their Constitutional rights under the Fourth (4th) and Fifth (5th) Articles in Amendment to the Original Organic United States Constitution as well as the provisions of the Montana Constitution;

20. The Plaintiff, Ronald J. Allison, being a Natural, soverign Citizen is not subject to the Income-Tax, it being a Direct Tax or Excise Tax and is therefore clearly illegal;

21. The Income Tax laws are being unconstitutionally applied to the Plaintiff, as a Natural, Soverign citizen;

22. The IRS collection actions which resulted in the seizure of the subject real and personal property was applied to property owned by Martha J. Allison, not the intended victim, Ronald J. Allison;

23. Martha J. Allison is not the "nominee" of or the "alter ego" of Ronald J. Allison, and those words are just words of art used by the Internal Revenue Service;

24. The IRS proceedings leading to the seizure and subsequent sale of the subject property were not substantially in sccordance with statutory law or the implementing regulations for such statutes;

25. The statutes found in USC Sections 26, 27, and 42 used by the IRS are not "positive law", enacted by the United States Congress, but only prima facie evidence of the law;

26. The IRS seizure of the subject property was conducted, allegedly, under the authority of 26 USC 6331 and the Plaintiffs do not fit within the definition of a "person" under that or any other IRS statute or implementing regulation;

27. The implementing regulations for 26 USC 6331 are found at 27 CFR, parts 53 and 70, which deal specifically with the taxation and regulation of alcohol, tobacco, and firearms. Plaintiffs are not in any way engaged in the manufacture, distribution, or sale of alcohol, tobacco, or firearms;

28. IRS Revenue Officer Cindy Bouldin lied in the documents she prepared and submitted which ultimately effected the seizure and sale of the subject property.

29. Assistant U.S. Attorney Victoria L. Francis lied in the documents she prepared and submitted to the Court to effect the seizure and sale of the subject property.

30. IRS Revenue Officer Anthony Morris lied in his preparation of the IRS Sealed Bid Sale documents he prepared, which effected the ultimate sale of the subject property;

31. Revenue Officers Bouldin and Morris and Assistant U.S. Attorney Francis criminally conspired to effect the seizure and sale of the subject real and personal property;

32. The Seizure of the subject property was totally and wholly unlawful and illegal;

33. The Sale of the subject real and personal property was totally and wholly unlawful and illegal;

34. The search and seizure of the subject property was illegal in that only IRS and ATF agents conducted the warrantless search and seizure, without any involvement of any United States Marshalls or the Rosebud County Sheriff or any Deputy Sheriffs.

35. The IRS conducted the sale of the subject property, even after having been informed, numerous times, by the Plaintiffs that, from the outset of the search and seizure, the IRS collection activities were being appealed both administratively and judicially;

36. The subject real and personal properties were and continue to be subject to liens which are senior and have priority over the alleged IRS liens and levies and which have not been satisfied;

37. The real and personal property seized and sold by the IRS was illegally and unlawfully obtained by the IRS and as such it is and remains stolen property;

38. Plaintiff Ronald J. Allison has suffered actual damages for each day the business was closed by the actions of the IRS and subsequently by the Defendants who have taken possession and control of the real and personal property and the costs of replacing tools, equipment, and inventory, and reinstalling the same items;

39. Plaintiffs have incurred actual damages for the costs of litigation, including Court costs, attorney's fees, service of process, photocopying, mailing, research and development

of this case and in maintaining this action;

WHEREFORE, Plaintiffs Ronald J. Allison and Martha J. Allison request the following relief:

(a) That the defendants, and each and every one of them be required to set forth the nature of their respective claims, if any to the real and personal property above-described, in order that all adverse claims, if any there be, of the Defendants or any of them may be determined by a Decree of this Court.

(b) That a Decree of this Court declare that the Defendants, and each of them, and any persons, firm or entity claiming by, through, or under them have no right, title, estate, or interest in or to or any lien or encumbrance upon the real and personal property described in this Complaint or any part thereof;

(c) That the right, title, and interests of the Plaintiffs, in and to the real and personal property above-described, and the whole thereof, be quieted in the Plaintiffs and that the Plaintiffs be declared adjudged and decreed to be the exclusive, absolute, and unqualified owners of said property, both real and personal, in fee simple;

(d) That the Defendants, and each of them, including all unknown Defendants, and any person, firm, or entity, (except Plaintiffs) that may claim by, through, or under any of said Defendants be forever barred and enjoined from asserting any right, title, estate, or interest or claim in or to, or lien or encumbrance upon the real and personal property described herein, or any part thereof, adverse to the Plaintiffs;

(e) That the Plaintiffs be awarded damages in the amount of one thousand dollars ($1,000.00) per day from each of the Defendats, City of Forsyth and Larry burns, for each and every day the business remains closed due to their actions,

as well as actual damages to be determined in Court, for the lost tools, equipment, inventory and replacement costs.

(f) That the Plaintiffs be awarded litigation costs, including all Court costs, attorney's fees, service of process, copying, mailing, and research and development costs incurred in maintaining this action;

(g) That the Plaintiffs receive punitive damages, in an amount determined by the Court;

(h) That the Defendants receive nothing as a result of this lawsuit and take nothing;

(i) That the Plaintiffs have such other and further relief as the Court may deem fair, just, and equitable under the circumstances.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL IN THIS MATTER.

Dated this 8th day of September, 1997.

/s/
Ronald J. Allison

/s/
Martha J. Allison

Plaintiffs Pro Se
390 North 10th Avenue
P.O. Box 661
Forsyth, MT 59327
406-356-2904

CERTIFIED MAIL
No.: Z 437 275 807

Ronald J. Allison
390 North 10th Avenue
P.O. Box 661
Forsyth, MT 59327
1-406-356-2904

February 20, 1998

Disclosure Officer (FOIA/PA)
Internal Revenue Service Center
Western Region
P.O. Box 9941
Ogden, UT 84409

ATTENTION: Freedom of Information Act/Privacy Act Unit

RE: Freedom of Information Act/Privacy Act Request
Your SSN: 303-34-7674 (revoked)

Dear Sirs:

I, Ronald J. Allison, being an "individual", as that term is defined by 5 USC 552 and 5 USC 552a, do hereby request and demand that you provide me with one (1) copy of each of the following records, documents, or other information or materials that I have hereby requested. My address is 390 North 10th Avenue, P.O. Box 661, Forsyth, MT 59327. For the purposes of your records, I believe you use SSN 303-34-7674. I revoked that number effective July 4, 1984.

I am making this request pursuant to the requirements of the Freedom of Information Act, 5 USC 552, the Privacy Act, 5 USC 552a, and pursuant to 26 USC 6203.

Pursuant to the regulations, at 26 CFR 601.702(f), I am defined as an "individual other requester".

I am hereby requesting one (1) legible photocopy of each of the documents, records, information, or materials that I have requested. I am willing to pay a reasonable statutory fee for the costs of searching for and copying the documents I have requested.

Please provide me the following:

a. Record 21, Record of Seizure and Sale of Real Property, with all related documents for the real property seized from Ronald J. Allison or Martha J. Allison. Please authenticate these documents for a court proceeding.

b. The District Director's Deed, as issued to the City of Forsyth, County of Rosebud, State of Montana, purchaser, on the property of Ronald J. Allison and/or Martha J.Allison.

c. The Bill of Sale or other document of title, as issued to Larry Burns and/or Larry's Service Center, of Baker, Fallon County, Montana, as purchaser of the personal proeprty of Ronald J. Allison and/or Martha J. Allison.

I hereby demand and request your positive response and reply to this Freedom of Information Act/Privacy Act request within the statutory time limit of ten (10) working days of your receipt, as is required under Section 5 USC 552 (a)(6)(A)(i).

In addition, you are hereby advised that, under Section 5 USC 552(b) of the Freedom of Information Act, you are required to release all of the reasonably segregable portions of those documents, records, information, and materials which are not themselves exempt.

Furthermore, I am aware of and understand that I have certain Adminsitrative Appeals Rights, pursuant to Section 5 USC 552(a)(6)(A)(i) of the Freedom of Information Act. Should I receive no timely response from you within the time

limits imposed by the statutes, I will be forced to exercise my appeal rights or to file suit to obtain the documents, records, information and material I have hereby requested.

Your immediate attention to this matter is greatly appreciated. I look forward to hearing from you at your earliest convenience and to receiving the documents and records I have requested.

Sincerely,

/s/
Ronald J. Allison

NOTARIZATION

STATE OF MONTANA)
:ss.
County of Rosebud)

Subscribed, Sworn to and Acknowledged before me, a Notary Public for the State of Montana, by Ronald J. Allison, on this 20th day of February, 1998.

S E A L

/s/
Valeria G. Cornett
Notary Public for the State of Montana
Residing at: Forsyth
My Commission expires:
4-7-2000

pc: District Director, IRS District Office
file

Z-437-275-808

Certified Mail
No. Z 437 275 807

Ronald J. Allison
390 North 10th Avenue
P.O. Box 661
Forsyth, MT 59327
1-406-356-2904

February 19, 1998

Disclosure Officer (FOIA/PA)
Internal Revenue Service Center
Western Region
P.O. Box 9941
Ogden, UT 84409

ATTENTION: Freedom of Information/Privacy Act Unit

RE: Freedom of Information/Privacy Act Request
Your SSN: 303-34-7674 (Revoked)

Dear Sirs:

I, Ronald J. Allison, of 390 North 10th Avenue, P.O. Box 661, Forsyth, Montana 59327, being an "individual", as that term is defined by 5 USC and 5 USC 552a, do hereby demand and request that you provide me with one (1) copy of each of the following documents, records, or other materials that I have requested.

I am making this request pursuant to the mandates of the Freedom of Information Act, 5 USC 552, and the Privacy Act 5 USC 552a, as well as under 26 USC 6203.

Pursuant to the regulations, at 26 CFR 601.702(f), I am defined as an "individual other requester".

I am requesting one (1) legible photocopy of each of the documents, records, or materials

that I am hereby requesting. I am not requesting the original document. I am willing to pay a reasonable statutory fee for the costs of searching for and copying the documents I am requesting.

Please provide me with one copy of the following documents:

a. Copies of all Stat. Notices pertaining to the years 1984, 1985, 1986, 1988, 1990, and 1991.

b. Copies of my Individual Master File (IMF) (the complete and entire file) for the years 1984, 1985, 1986, 1988, 1989, 1990, and 1991.

c. Copies of all documents showing the date of assessment, (the 23C date).

d. Copies of the Notice of Assessment and Demand, as mandated by Section 6303 of the Internal Revenue Code, for the years 1984, 1985, 1986, 1988, 1989, 1990, and 1991.

I hereby demand that I receive a positive response and reply to this Freedom of Information Act/Privacy Act request within the statutory time limit of ten (10) working days of receipt, pursuant to Section 5 USC 552(a)(6)(A)(i).

Furthermore, Section 5 USC 552(b) of the Freedom of Information Act requires you to release all of the reasonably segregable portions of those documents and records which are not themselves exempt.

I am aware of my Administrative Appeal rights pursuant to Section 5 USC 552(a)(6)(A)(i) of the Freedom of Information Act. Should no timely response be received within the time limits specified in the statute, I will either exercise my right of Administrative Appeal or file suit to obtain the documents and records I have requested.

Your immediate attention to this matter is

greatly appreciated. I look forward to hearing from you at your earliest convenience.

Sincerely,

/s/
Ronald J. Allison

STATE OF MONTANA)
:ss.
County of Rosebud)

Subscribed, Sworn to and Acknowledged before me, a Notary Public for the State of Montana, by Ronald J. Allison, on this 20th day of February, 1998.

S E A L

Valeria G. Cornett
Notary Public for the State of Montana
Residing at: Forsyth
My Commission expires:
4-7-2000

pc: District Director. District Office, IRS
file

Z-437-275-808

July 31, 1996

Ronald J. Allison
P.O. Box 661
Forsyth, MT 59327

Jay Hammer
Disclosure Officer
Internal Revenue Service
Box 9941
Ogden, UT 84409

RE: Freedom of Information Act (FOIA) request

Dear Mr. Hammer:

I, Ronald J. Allison, being an individual, as defined by 5 USC 552, do hereby demand and request that you provide me with copies of the following documents and materials I have requested. Under 26 CFR 601.702(f), I am an individual other requester.

I am making this request pursuant to the Freedom of Information Act (FOIA) 5 USC 552. These documents and materials are also being requested under the Privacy Act, 5 USC 552a et.seq. and 26 USC 6203.

I am requesting legible photocopies of the documents and materials that I have requested. I do not want the originals. I want one (1) copy of each document, material, or item listed below, and I am willing to pay a reasonable fee for copying each item provided me.

Please provide the following:

a. A copy of the document or determination which identifies my "taxable class", as defined by law.

b. A copy of the substitute returns that have been filed.

c. The Form 23C and the record of assessment upon which it was based.

d. Proof of Service of all required notices.

e. Copies of the Court ordered Warrant of Distraint, Writ of Entry, and Order for Summons.

f. My Individual Master File (IMF)

g. The System of Records called Treasury Department/IRS 42.008

h. Audit Information ManagementSystems

i. Decoding Manual #6209

j. Translation of Coded material for each of the systems identified above in (h) and (i).

k. Delegation of Authority Orders for all of the above items.

Please note that I demand a positive response to this freedom of Information request within ten (10) working days of the date of this letter, as is required by 5 USC 552 (6)(A)(i) or Court action will be taken. Should no response be provided within the time limits allowed by law I will also contact the Commissioner of the Internal Revenue Service, in Washington, D.C. in an attempt to expedite this matter and obtain the requested information in a timely manner.

I look forward to receiving your timely response and the documents and materials I have requested.

Sincerely,

/s/
Ronald J. Allison

Notary's Certificate

STATE OF MONTANA)
:ss.
County of Rosebud)

Subscribed, Sworn to and acknowldeged before me, a Notary Public for the State of Montana, by Ronald J. Allison, on this 31st day of July, 1996.

/s/
Valeria G. Cornett
Notary Public for the State of Montana
Residing at: Forsyth
My Commission expires:
April 7, 2000

S E A L

Certificate of Service

This is to certify that the above attached Freedom of Information Request was duly served upon the following individuals by first class mail, postage prepaid, this 31st day of July, 1996 at the following addresses:

District Director
Internal Revenue Service
600 17th Street
Denver, CO 80202-2490

Timothy Towns
Internal Revenue Service
Automated Collection systems
Box 9949
Ogden, UT 84409

Dated this 31st day of July, 1996.

/s/
Ronald J. Allison